UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,819	01/22/2001	Robert M. Zeidman		9823

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EXAMINER
MANNING, JOHN

ART UNIT	PAPER NUMBER
2614	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	**Applicant(s)**
Office Action Summary	09/767,819	ZEIDMAN, ROBERT M.
	Examiner	**Art Unit**	
	John Manning	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-10_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-10_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed October 22, 2004 have been fully considered but they

are not persuasive.

The applicant argues for claims 1, 3, 5 and 7 that in Philyaw "the coded

advertiser's information merely encodes routing information to allow the recipient to

receive specific product information from an advertiser's server through complicated re-

routing in a global communication network (see, Philyaw's Figure 3). Such coded

advertiser's information bears no relation to the broadcast". Philyaw clearly discloses

that the information is related to the broadcast. "This information can be in the form of .

interactive programs, data files, etc. In one example, when an advertisement appears

on the television, the tone can be generated and then additional data displayed on the

display 118. Additionally, a streaming video program could be played on the PC

received over the network, which streaming video program is actually longer than the

advertising segment on the broadcast. Another example would be a sports game that

would broadcast the tone in order to allow a user access to information that is not

available over the broadcast network, such as additional statistics associated with the

sports program, etc" (Col 4, Lines 43-54). The applicant also argues that "[b]ased on

such information about the broadcast, not only is the advertiser able to deliver product

information to the viewer, the advertiser is also able to assess the effectiveness of the

broadcast as a vehicle for delivering the product information the advertiser desires to

provide its target viewers. Neither embedding the information about the broadcast nor

its attendant benefits is disclosed or suggested by Philyaw." Again, Philyaw clearly

discloses that based on such information about the broadcast the advertiser is also able

to assess the effectiveness of the broadcast as a vehicle for delivering the product

information the advertiser desires to provide its target viewers. The "producer of the

program, whether it be an on-air program, a program embedded in a video tape, CD-

ROM, DVD, or a cassette, can allow the user to automatically access additional

information that is not displayed on the screen. For example, in a sporting event,

various statistics can be provided to the user from a remote location, merely by the

viewer watching the program. When these statistics are provided, the advertiser can be

provided with demographic information and background information regarding the user.

This can be important when, for example, the user may record a sports program. If the

manufacturer sees that this program routing code is being output from some device at a

later time than the actual broadcast itself, this allows the advertisers to actually see that

their program is still being used and also what type of individual is using it" (Col 14,

Lines 15-30).

In regard to claims 2, 6 and 8-10, the Applicant argues "because Philyaw's coded

information is not about the broadcast, there is no motivation or suggestion from

Philyaw to combine its teaching with the use of time stamps, counters and web pages in

the manner of the suggested by the Examiner and, even if so combined, Philyaw's

system does not reap the benefits of time stamp, the counters and the web pages, as

Philyaw's coded advertiser's information do not in any way relate to the video content of

the broadcast, the user's viewing time, or matching URLs to sponsors of the broadcast".

As detailed above, Philyaw's coded information is about the broadcast and does relate

to the video content of the broadcast. In response to applicant's argument that there is

no suggestion to combine the references, the examiner recognizes that obviousness

can only be established by combining or modifying the teachings of the prior art to

produce the claimed invention where there is some teaching, suggestion, or motivation

to do so found either in the references themselves or in the knowledge generally

available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed.

Cir. 1992). In response to applicant's argument that the examiner's conclusion of

obviousness is based upon improper hindsight reasoning, it must be recognized that

any judgment on obviousness is in a sense necessarily a reconstruction based upon

hindsight reasoning. But so long as it takes into account only knowledge which was

within the level of ordinary skill at the time the claimed invention was made, and does

not include knowledge gleaned only from the applicant's disclosure, such a

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

1971).

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1, 3-5 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by

Philyaw et al. (US Pat No 6,098,106).

In regard to claim 1, the claimed steps of "receiving a broadcast with embedded

information about the broadcast" and "extracting content from said broadcast, for

displaying to the viewer" are met by Figures 2, 9-10 and 13. "The receiver 110

separates the audio signal from the video signal. A special trigger signal located within

the transmitted advertiser audio signal triggers proprietary software running on the

computer 204 which launches a communication application, in this particular

embodiment, the web browser application located on the PC 204" (Col 5, Lines 7-13).

The claimed step of "extracting said embedded information from said broadcast" is met

by Figures 2, 9-10 and 13. "Coded advertiser information contained within the audio

signal is then extracted and appended with the address of a proprietary server located

on the communication network" (Col 5, Lines 13-16). The claimed step of "storing said

embedded information" is inherent to the reference because the embedded information

is sent to the disclosed PC. The claimed step of "sending said embedded information

and viewer information to a remote computer" is met by Figure 4a-4d and 9-10. "This

appended data, in addition to other control codes, is inserted directly into the web

browser application for automatic routing to the communication network. The web

browser running on PC 204, and communicating to the network with a through an

internal modem 208, in this embodiment, transmits the advertiser information to the

remote server" (Col 5, Lines 17-23). A "user's profile can be forwarded to the original

subscriber or manufacturer. The PC 906 has associated therewith a profile database

1302, which profile database 1302 is operable to store a profile of the user 908" (Col 10,

Lines 51-55). The claimed step of "receiving specific incentives based on said

embedded information and said viewer information sent" is met by Figure 14.

"However, to provide some incentive to the user to enter more information, the original

prompt in function block 1404 would have offers for such things as coupons, discounts,

etc, if the user will enter additional information" (Col 11, Lines 58-61).

In regard to claim 3, the claimed step of "imbedding information about broadcast

along with the broadcast content" is met by Figure 1. "The program source is input to a

mixing device 106, which mixing device is operable to mix in an audio signal. This

audio signal is derived from an audio source 100 which comprises a coded audio signal

which is then modulated onto a carrier which is combined with the television program

source 104. This signal combining can be done at the audio level, or it can even be

done at the RF level in the from of a different carrier" (Col 2, Lines 65-67; Col 3, Lines 1-

5). The claimed step of "broadcasting said content with said embedded information to a

remote viewer of the content" is met by Figure 1, Item 117. "In the embodiment

illustrated in FIG. 1, there is provided a transmission station 101 and a receive station

117 that are connected via a communication link 108" (Col 2, Lines 58-60).

In regard to claim 4, the claimed step of "receiving information from said viewer

about said broadcast" is met by Figure 4a-4d and 9-10. "This appended data, in

addition to other control codes, is inserted directly into the web browser application for

automatic routing to the communication network. The web browser running on PC 204,

and communicating to the network with a through an internal modem 208, in this

embodiment, transmits the advertiser information to the remote server" (Col 5, Lines 17-

23). A "user's profile can be forwarded to the original subscriber or manufacturer. The

PC 906 has associated therewith a profile database 1302, which profile database 1302

is operable to store a profile of the user 908" (Col 10, Lines 51-55). The claimed step of

"sending specific incentives to said viewer based on said information received" is met by

Figure 14. "However, to provide some incentive to the user to enter more information,

the original prompt in function block 1404 would have offers for such things as coupons,

discounts, etc, if the user will enter additional information" (Col 11, Lines 58-61).

In regard to claim 5, the claimed step of "imbedding information about the

broadcast along with the broadcast content at regular time periods" is met by Figure 1.

"The program source is input to a mixing device 106, which mixing device is operable to

mix in an audio signal. This audio signal is derived from an audio source 100 which

comprises a coded audio signal which is then modulated onto a carrier which is

combined with the television program source 104. This signal combining can be done

at the audio level, or it can even be done at the RF level in the from of a different

carrier" (Col 2, Lines 65-67; Col 3, Lines 1-5). The claimed step of "broadcasting said

content with said embedded information to a remote viewer of the content" is met by

Figure 1, Item 117. "In the embodiment illustrated in FIG. 1, there is provided a

transmission station 101 and a receive station 117 that are connected via a

communication link 108" (Col 2, Lines 58-60).

In regard to claim 7, the claimed step of "receiving information about a broadcast from a remote viewer of said broadcast" is met by Figure 4a-4d and 9-10. "This appended data, in addition to other control codes, is inserted directly into the web browser application for automatic routing to the communication network. The web browser running on PC 204, and communicating to the network with a through an internal modem 208, in this embodiment, transmits the advertiser information to the remote server" (Col 5, Lines 17-23). A "user's profile can be forwarded to the original subscriber or manufacturer. The PC 906 has associated therewith a profile database 1302, which profile database 1302 is operable to store a profile of the user 908" (Col 10, Lines 51-55). The claimed step of "sending specific incentives to the remote viewer baaed on said information received" is met by Figure 14. "However, to provide some incentive to the user to enter more information, the original prompt in function block 1404 would have offers for such things as coupons, discounts, etc, if the user will enter additional information" (Col 11, Lines 58-61).

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 2, 6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philyaw et al.

In regard to claim 2, the claimed steps of "receiving a broadcast with information about the broadcast imbedded into the broadcast at regular time periods" and "extracting content from said broadcast, for displaying to the viewer" are met by Figures 2, 9-10 and 13. "The receiver 110 separates the audio signal from the video signal. A special trigger signal located within the transmitted advertiser audio signal triggers proprietary software running on the computer 204 which launches a communication application, in this particular embodiment, the web browser application located on the PC 204" (Col 5, Lines 7-13). The reference fails to explicitly discloses the use of timestamps; however, the examiner take OFFICIAL NOTICE that it notoriously well know in the art to use timestamps so as to synchronize embedded information with the video content. Consequently, it would have been obvious to one of ordinary skill in the art to implement Philyaw with timestamps so as to synchronize embedded information with the video content. The claimed step of "extracting said embedded information from said broadcast" is met by Figures 2, 9-10 and 13. "Coded advertiser information contained within the audio signal is then extracted and appended with the address of a proprietary server located on the communication network" (Col 5, Lines 13-16). The reference fails to explicitly discloses the use of incrementing counters for counting time slices during said time periods; however, the examiner take OFFICIAL NOTICE that it notoriously well know in the art to use incrementing counters for counting time slices during said time periods so as to maintain a record of the view time of a program by the user. Consequently, it would have been obvious to one of ordinary skill in the art to implement Philyaw with the use of incrementing counters for counting time slices during

said time periods so as to maintain a record of the view time of a program by the user.

The claimed step of "storing said embedded information" is inherent to the reference

because the embedded information is sent to the disclosed PC. The claimed step of

"sending said embedded information and viewer information to a remote computer" is

met by Figure 4a-4d and 9-10. "This appended data, in addition to other control codes,

is inserted directly into the web browser application for automatic routing to the

communication network. The web browser running on PC 204, and communicating to

the network with a through an internal modem 208, in this embodiment, transmits the

advertiser information to the remote server" (Col 5, Lines 17-23). A "user's profile can

be forwarded to the original subscriber or manufacturer. The PC 906 has associated

therewith a profile database 1302, which profile database 1302 is operable to store a

profile of the user 908" (Col 10, Lines 51-55). The claimed step of "receiving specific

incentives based on said embedded information and said viewer information sent" is

met by Figure 14. "However, to provide some incentive to the user to enter more

information, the original prompt in function block 1404 would have offers for such things

as coupons, discounts, etc, if the user will enter additional information" (Col 11, Lines

58-61).

In regard to claim 6, the claimed step of "receiving information from said viewer

about said broadcast" is met by Figure 4a-4d and 9-10. "This appended data, in

addition to other control codes, is inserted directly into the web browser application for

automatic routing to the communication network. The web browser running on PC 204,

and communicating to the network with a through an internal modem 208, in this

embodiment, transmits the advertiser information to the remote server" (Col 5, Lines 17-

23). A "user's profile can be forwarded to the original subscriber or manufacturer. The

PC 906 has associated therewith a profile database 1302, which profile database 1302

is operable to store a profile of the user 908" (Col 10, Lines 51-55). The reference fails

to explicitly discloses the use of incrementing counters for counting time slices during

said time periods; however, the examiner take OFFICIAL NOTICE that it notoriously

well know in the art to use incrementing counters for counting time slices during said

time periods so as to maintain a record of the view time of a program by the user.

Consequently, it would have been obvious to one of ordinary skill in the art to implement

Philyaw with the use of incrementing counters for counting time slices during said time

periods so as to maintain a record of the view time of a program by the user. The

claimed step of "sending specific incentives to said viewer based on said information

received" is met by Figure 14. "However, to provide some incentive to the user to enter

more information, the original prompt in function block 1404 would have offers for such

things as coupons, discounts, etc, if the user will enter additional information" (Col 11,

Lines 58-61).

In regard to claim 8, the claimed step of "receiving information about a broadcast

from a remote viewer of said broadcast" is met by Figure 4a-4d and 9-10. "This

appended data, in addition to other control codes, is inserted directly into the web

browser application for automatic routing to the communication network. The web

browser running on PC 204, and communicating to the network with a through an

internal modem 208, in this embodiment, transmits the advertiser information to the

remote server" (Col 5, Lines 17-23). A "user's profile can be forwarded to the original

subscriber or manufacturer. The PC 906 has associated therewith a profile database

1302, which profile database 1302 is operable to store a profile of the user 908" (Col 10,

Lines 51-55). The reference fails to explicitly discloses the use of incrementing

counters for counting time slices during said time periods; however, the examiner take

OFFICIAL NOTICE that it notoriously well know in the art to use incrementing counters

for counting time slices during said time periods so as to maintain a record of the view

time of a program by the user. Consequently, it would have been obvious to one of

ordinary skill in the art to implement Philyaw with the use of incrementing counters for

counting time slices during said time periods so as to maintain a record of the view time

of a program by the user. The claimed step of "sending specific incentives to the

remote viewer based on said information received and said counter values received" is

met by Figure 14. "However, to provide some incentive to the user to enter more

information, the original prompt in function block 1404 would have offers for such things

as coupons, discounts, etc, if the user will enter additional information" (Col 11, Lines

58-61).

In regard to claim 9, the claimed step of "receiving information about a broadcast

from a remote viewer of said broadcast" is met by Figure 4a-4d and 9-10. "This

appended data, in addition to other control codes, is inserted directly into the web

browser application for automatic routing to the communication network. The web

browser running on PC 204, and communicating to the network with a through an

internal modem 208, in this embodiment, transmits the advertiser information to the

remote server" (Col 5, Lines 17-23). A "user's profile can be forwarded to the original

subscriber or manufacturer. The PC 906 has associated therewith a profile database

1302, which profile database 1302 is operable to store a profile of the user 908" (Col 10,

Lines 51-55). The claimed step of "searching a database for information about

sponsors of the content of said broadcast and the incentives offered by said sponsors"

is met by Figure 3. "The ARS 308 specifically will extract the product code information

from the received packet 400 and, once extracted, will then decode this product code

information. Once decoded, this information is then compared with data contained

within the ARS advertiser database 310 to determine if there is a 'hit'" (Col 7, Lines 2-6).

The reference discloses sending the advertisers URLs to the web browser of the user.

"Referring now to FIG. 4b, the message packet 402 comprises the address of the

source PC 302, the URL of the advertiser server 312 embedded within instructional

code, and the URL of the ARS 308" (Col 7, Lines 18-22). The reference fails to

explicitly disclose creating a Web page containing links to all sponsor incentive websites

and to specific incentives and sending said Web page back to said viewer; however, the

examiner take OFFICIAL NOTICE that it notoriously well know in the art to use a web

page so as to facilitate the organization of URLs. Consequently, it would have been

obvious to one of ordinary skill in the art to implement Philyaw with the use a web page

so as to facilitate the organization of URLs.

In regard to claim 10, the claimed step of "receiving information about a

broadcast from a remote viewer of said broadcast" is met by Figure 4a-4d and 9-10.

"This appended data, in addition to other control codes, is inserted directly into the web

browser application for automatic routing to the communication network. The web

browser running on PC 204, and communicating to the network with a through an

internal modem 208, in this embodiment, transmits the advertiser information to the

remote server" (Col 5, Lines 17-23). A "user's profile can be forwarded to the original

subscriber or manufacturer. The PC 906 has associated therewith a profile database

1302, which profile database 1302 is operable to store a profile of the user 908" (Col 10,

Lines 51-55). The reference fails to explicitly discloses the use of incrementing

counters for counting time slices during said time periods; however, the examiner take

OFFICIAL NOTICE that it notoriously well know in the art to use incrementing counters

for counting time slices during said time periods so as to maintain a record of the view

time of a program by the user. Consequently, it would have been obvious to one of

ordinary skill in the art to implement Philyaw with the use of incrementing counters for

counting time slices during said time periods so as to maintain a record of the view time

of a program by the user. The claimed step of "searching a database for information

about sponsors of the content of said broadcast and the incentives offered by said

sponsors" is met by Figure 3. "The ARS 308 specifically will extract the product code

information from the received packet 400 and, once extracted, will then decode this

product code information. Once decoded, this information is then compared with data

contained within the ARS advertiser database 310 to determine if there is a 'hit'" (Col 7,

Lines 2-6). The reference discloses sending the advertisers URLs to the web browser

of the user. "Referring now to FIG. 4b, the message packet 402 comprises the address

of the source PC 302, the URL of the advertiser server 312 embedded within

instructional code, and the URL of the ARS 308" (Col 7, Lines 18-22). The reference

fails to explicitly disclose creating a Web page containing links to all sponsor incentive

websites and to specific incentives and sending said Web page back to said viewer;

however, the examiner take OFFICIAL NOTICE that it notoriously well know in the art to

use a web page so as to facilitate the organization of URLs. Consequently, it would

have been obvious to one of ordinary skill in the art to implement Philyaw with the use a

web page so as to facilitate the organization of URLs.

Conclusion

5.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

6.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to John Manning whose telephone number is 571-272-

7352. The examiner can normally be reached on M-F: 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for

the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

JM
June 26, 2005

JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600